



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. Bert Ford, Administrator
Texas Liquor Control Board
Austin 1, Texas

Dear Sir:

Opinion No. 0-5977

Re: Whether product advertised as capable of making wine may be legally sold under Texas law.

We have your letter reading:

"We are submitting herewith sales material of Grapesugar Ltd., Burbank, California, which apparently is circulated to induce prospective sales agents to distribute a product designated as 'Grapesugar' for the sole and only purpose of manufacturing alcoholic beverages.

"The manufacture of any type of alcoholic beverage is prohibited in Texas except by the holders of proper permits or licenses obtained by due process of law. It is apparent that in marketing 'Grapesugar' the manufacturers advance it as a substitute for normally manufactured and marketed alcoholic beverages, and that the selling program is designed to reach ordinary consumers who are not legally engaged in the sale of alcoholic beverages. It would appear that any person engaged in selling this product under such circumstances is conspiring to violate the penal laws of Texas.

"After considering the matter, will you kindly advise whether in your opinion the manufacturers of this product and their agents acting within the State of Texas in advancing the sale of 'Grapesugar' for the purpose of manufacturing or

Hon. Bert Ford, p. 2

fermenting an alcoholic beverage are acting in violation of the State law in soliciting orders for this product from persons who are not the holders of permits privileging the manufacture of alcoholic beverages."

You enclose advertising material making the following claims and representations, among others:

"Dear Sir: THIS IS IT. Cut below shows face of package, actual size,

G R A P E S U G A R

"This package will ferment, color and flavor TWO GALLONS of fresh fruit juice, dried fruit juice or other sweet liquids. The result is a beverage of 12 to 14 percent alcoholic content with a sparkling clear wine color and excellent flavor.

IMITATION B U R G E N D Y FLAVOR

FULL and COMPLETE but very simple and easy DIRECTIONS with a general 'KNOW HOW' will be found inside package.

"Active ingredient, wine grape yeast developed from wine grapes with a mixture of charred saccharose, meal and U. S. Certified color."

"The people everywhere are completely OUT of ALCOHOLIC drinks or very SHORT at sky high prices and hard to get. RIGHT NOW is the time to ACT and secure EXCLUSIVE state or county rights."

"Fine results are produced with fresh fruit juice, juice from boiled dried fruit and sweet liquids such as syrups of most any brand and the markets and stores are full of them. You don't need any sugar as syrups will do just as well. Corn syrup is excellent. Many even report fine results with just half syrup, half water and this product added, left in warm place or at living room temperature. Some use honey in place of syrups. Some add syrup to the fruit juice to increase its sugar content and thus get a beverage

Hon. Bert Ford, p. 3

of a higher ALCOHOLIC content up to 14% when the sugar content is 28% at start of fermentation. Most brands of syrup contain 50% sugar. COMPLETE DIRECTIONS AND ALL ANGLES ARE IN EVERY PACKAGE.

"AN 8 OUNCE GLASS OF SUCH A BEVERAGE CONTAINING 14% ALCOHOL contains OVER ONE OUNCE OF ALCOHOL. A one ounce glass of 100 proof whiskey contains only 1/2 an ounce of alcohol. Thus you get OVER TWICE as much ALCOHOL in an 8 ounce glass of such a beverage as you do in one ounce glass of the strongest whiskey made. THAT IS WHAT MAKES SALES. That accounts for the demand. THAT IS WHAT CAN PUT \$3,000 A MONTH INTO YOUR POCKET IF YOU ARE EXPERIENCED AND ACT QUICKLY."

"D I R E C T I O N S

"SIMPLY PUT CONTENTS OF THIS PACKAGE INTO ANY LUKE WARM LIQUID TO BE FERMENTED. KEEP IN WARM PLACE AND IT WILL BE READY FOR USE WITHIN ONE OR TWO DAYS AFTER FERMENTATION CEASES, THUS GIVING IT TIME TO CLEAR UP. USE ALL OF THE PACKAGE FOR TWO GALLONS OR HALF OF IT FOR ONE GALLON."

There was also enclosed a letter from a representative of the manufacturer, addressed to a prospective Texas agent, a part of which we quote:

"We have not as yet closed the Texas territory, but the little 3 line ad pulled so many inquiries that one would think there was not a drop of alcoholic beverage in Houston or in Texas."

While we have quoted only a small portion of the advertising material it is sufficient to indicate clearly that its purpose is to encourage persons in this State to manufacture wine. It is only by obtaining a Class A or B Winery Permit as prescribed by subdivisions 3 and 4 of Sec-

Hon. Bert Ford, p. 4

tion 15, Texas Liquor Control Act that such manufacture would be legal.

The Texas Penal Code contains the following provisions:

"Art. 70. Who is an accomplice. - - An accomplice is one who is not present at the commission of an offense, but who, before the act is done, advises, commands or encourages another to commit the offense; or

".

"Who prepares arms or aid of any kind, prior to the commission of an offense, for the purpose of assisting the principal in the execution of the same."

"Art. 72. Punishment of accomplice. - - Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender."

From the facts set forth, it seems logical to conclude that a person selling the product described to an unlicensed individual is advising and encouraging him to manufacture wine. Such an act of manufacture is a violation of law and is punishable as a misdemeanor. Art. 666-41, V.P.C.

It seems clear, moreover, that a sale of the product under the circumstances above outlined would bring the seller within the terms of the statutes above quoted defining an accomplice. In Texas, however, the distinction between principals and accomplices does not obtain in misdemeanor cases. It follows, therefore, that if the purchaser makes ~~wine~~ of the product without a permit, then the seller and the purchaser could be prosecuted as principals. 12 Tex. Jur., p. 326, Sec. 73.

It is our opinion, therefore, that in each instance where a purchaser manufactures wine without a permit from the product described, that both he and the seller may be

Hon. Bert Ford, p. 5

prosecuted as principals for violating the law.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/

Elbert Hooper
Assistant

EH:db:bb

APPROVED MAY 4, 1944
/s/ G. P. Blackburn
ACTING ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
By-O. S., Chairman